



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant disputing a rent increase, and seeking to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The landlord has not provided any evidentiary material, and the tenant advised that the landlord was served with all of the tenant's evidence. That was not disputed by the landlord, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the tenant established that rent has been increased contrary to the law?

Background and Evidence

The tenant testified that this fixed-term tenancy began on October 1, 2022 and reverted to a month-to-month tenancy after March 31, 2023, and the tenant still resides in the rental unit. Rent in the amount of \$1,100.00 is payable on the 1st day of each month. In March, 2020 the tenant paid a security deposit in the amount of \$500.00 to the previous landlord of the rental unit as well as a pet damage deposit in the amount of \$500.00. The new landlord took possession in August, 2022, and a copy of the tenancy agreement has been provided for this hearing. The rental unit is one of 8 units in a duplex; the landlord does not reside on the property.

The tenant also testified that the tenant moved in 3 years ago. At the end of September, 2022 the new landlord came onto the property and went to each unit and showed the tenants a portfolio containing 2 papers: an eviction notice and the other side was a new tenancy agreement. The tenant had already been paying \$1,000.00 per month for rent, and the new tenancy agreement increased the rent to \$1,100.00 per month. The tenant asked multiple times if it was legal because it didn't sit well with the tenant. However, the tenant's options were to sign a new tenancy agreement or move out. The tenant didn't know the rules or that the landlord was not able to increase rent by 10%. The landlord said he was giving the tenant a deal because he liked the tenant, and he was considering increasing rent to \$1,500.00.

Two other tenants went to Arbitration and brought to the tenant's attention that it was wrong to do that.

Police told the tenant to mention in this hearing about 2 police reports, one the day prior to the hearing, wherein the landlord entered the rental property without any notice to the tenant and verbally harassing the tenant. On May 2, 2023 the landlord entered, and ever since he received notice of this hearing, he went to all units, and walked up into the carport and asked if the tenant's husband was home and telling the tenant to stop the Arbitration. The tenant was alone and told the landlord that the application would not be withdrawn. The landlord only attends when the tenant's husband is not at home. The day prior to this hearing, the landlord parked out in front of the rental unit, however police had mentioned to the landlord on more than 1 occasion to not enter onto the property after 6:00 p.m. The landlord was there after 7 p.m., entered the carport between the tenant's car and the neighbour's car which is not common space. The landlord wanted to take photographs, walked through the carport to the back of the unit. Another tenant came out and they started arguing.

The landlord testified that rent was \$1,000.00 per month. The tenant told the landlord that the previous landlord didn't take care of the property. Neighbours had asked the landlord to clean it up. The landlord asked the tenant to do it, but didn't and the landlord went there to clean it up. Police talked to the landlord about cleaning up the carport. The landlord has been a landlord for 10 years and has never entered a rental unit without notice, only the outside.

The tenant wanted the landlord to replace the hot water tank and said she'd pay \$100.00 more for rent, but it was working just fine, just didn't look good.

The landlord denies that there was an eviction notice with the new tenancy agreement for the tenant to sign.

The landlord attends at the other properties to drop off mail.

The tenant clarified the landlord's testimony, due to the landlord's accent. The landlord is saying that about a month ago police were walking around doing checks, and the landlord was cleaning another unit. The landlord called a police officer over and they talked. The officer said there is a lot of crime in the area and be sure to clean up carports. The landlord wrote a notice at the beginning of May to clean up the carport, and the only things allowed were garbage bins and cars. It is not true that police ordered it. On May 24, 2023 the tenant received a 24 hour notice to remove all items except bins and cars.

SUBMISSIONS OF THE TENANT:

The tenant paid \$1,100.00 per month for rent up until February, 2023, when the tenant started this application. The tenant contacted the Residential Tenancy Branch and was told that the \$100.00 extra that the tenant paid should be claimed. The extra \$100.00 was paid in October, November and December, 2022 as well as January and February, 2023. The tenant started paying the original amount of \$1,000.00 starting in March, 2023. The hot water tank broke after the new tenancy agreement was signed.

SUBMISSIONS OF THE LANDLORD:

The tenant paid \$1,000.00 in March, April and May, 2023.

Analysis

The *Residential Tenancy Act* states that

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

Amount of rent increase

43 (1) A landlord may impose a rent increase only up to the amount

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

Generally, where a tenant signs a new tenancy agreement, the tenant is believed to have agreed to the increase in writing. In this case, the parties signed the new tenancy agreement on September 6, 2022 for rent in the amount of \$1,100.00 per month for a tenancy commencing on October 1, 2022.

The tenant testified that when the landlord arrived with the new tenancy agreement, the landlord had a portfolio which clearly showed a Notice to End the Tenancy. The landlord disputes that testimony, and it is clear that the landlord didn't serve the Notice to End the Tenancy.

I simply do not accept the landlord's testimony that the tenant agreed to sign a new tenancy agreement for 10% more rent in exchange for the landlord replacing a hot water tank that didn't look nice but worked just fine. That is also disputed by the tenant who testified that the hot water tank broke after the new tenancy agreement was signed.

On a balance of probabilities, I find that if the tenant had not agreed to sign the new tenancy agreement the landlord would have served a Notice to End the tenancy, which is contrary to the law.

The parties agree that the tenant paid \$1,100.00 per month for October, 2022 through February, 2023, a total of 5 months. I find that the landlord must repay the tenant \$500.00. Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant as against the landlord in the amount of \$600.00 and I order that the tenant be permitted to reduce rent by \$600.00 for a future month, or may serve the landlord with the order and file it with the Provincial Court of British Columbia, Small Claims division for enforcement.

I further order that rent remains at \$1,000.00 until it has increased in accordance with the law.

Although the tenant has not made an application concerning the landlord entering onto the property without sufficient notice, I make no orders in that regard, however I offer the following:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
 - (i) the purpose for entering, which must be reasonable;
 - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Conclusion

For the reasons set out above, I hereby order that rent remains at \$1,000.00 until it has increased in accordance with the law.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00; and I order that the tenant be permitted to reduce rent for a future month by that amount, or may otherwise recover it in the Small Claims Court.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 3, 2023

Residential Tenancy Branch